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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 473rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 10 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the initial report of Bolivia (continued) (CAT/C/XXVI/CONCL.3/Rev.1)

1. At the invitation of the Chairman, Mr. Gumucio (Bolivia) took a place at the Committee table.

2. Mr. GONZÁLEZ POBLETE read out the conclusions and recommendations of the Committee concerning the initial report of Bolivia, contained in document CAT/C/XXVI/CONCL.3/Rev.1.

3. Mr. GUMUCIO (Bolivia) assured the Committee that its conclusions and recommendations would be taken into account by his Government, and said he hoped that the next report would show that they had been reflected in Bolivian legislation. Bolivia hoped that the Committee would help it to receive the technical assistance in preparing future periodic reports that would enable it to comply fully with the reporting guidelines.

4. Mr. Gumucio (Bolivia) withdrew.

Initial report of Kazakhstan (continued) (CAT/C/47/Add.1)

5. At the invitation of the Chairperson, the members of the delegation of Kazakhstan took places at the Committee table.

6. Mr. ABDILDIN (Kazakhstan) said that the questions asked by members of the Committee, and particularly those of Mr. Yakovlev would be extremely helpful to his Government in revising its Criminal Code and Code of Criminal Procedure, and in defending human rights generally.

7. His delegation agreed that an explicit definition of the many-faceted crime of torture needed to be included in the Criminal Code, which at the moment simply referred to torture and the penalties for it. After giving thorough study to a fuller definition, the Government would have to change its legislation accordingly.

8. There was also no question that a lawyer should be present from the very beginning of the interrogation of a suspect, and not just after 72 hours; that the conditions of detention of persons accused of a crime indeed constituted a humanitarian issue; that no one should ever be wrongly convicted; and that there was no need for haste in criminal proceedings, which in the interests of justice should always be deliberate.

9. The Human Rights Commission attached to the Office of the President had been established to assist the President in his capacity as defender of the human rights and fundamental freedoms of the people. The Commission was composed of professional legal

specialists - members of Parliament, human rights advocates, figures from the cultural world, academics, private citizens - who worked specifically in the field of human rights. The Commission had a purely advisory function: it had no right to intervene in the work of the courts or the procurators. It made a yearly report to the President on the state of human rights in Kazakhstan. It also worked very closely with law enforcement agencies, the police force, and especially the Office of the Procurator-General, the Ministry of Justice, and the Ministry of Internal Affairs. It received many letters from private citizens, most having to do with wrongful convictions, who had exhausted all other domestic remedies. In such cases, the Committee wrote to the Office of the Procurator-General and the Supreme Court asking for a review and a report on the action taken. Usually, since it was backed by that of the President, the authority of the Commission was considerable. The Commission was also in frequent contact with international organizations such as the United Nations Development Programme (UNDP) and other United Nations agencies, the Inter-Parliamentary Union and the Organization for Security and Cooperation in Europe (OSCE), with which it often organized joint seminars.

10. Expressing appreciation for Mr. Yakovlev's positive assessment of the situation in Kazakhstan with respect to torture and the reform and building of the State in general, he confirmed that it was the President's policy to condemn the use of torture within the country's political apparatus and his firm intention to take action in any case in which the crime of torture had been committed.

11. Regarding the gift presented to Hillary Clinton during her visit to Kazakhstan, he said that the artefact reflected the varied cultural traditions of the Kazakh people. It symbolized individuality and had been given to her as a sign of their respect for her strong will and independence.

12. As Chairman of the national Human Rights Commission, he assured the Committee that Kazakhstan was considering ratification of other human rights treaties, particularly the two international covenants, and would no doubt do so in the near future. Furthermore, the establishment of an Ombudsman's office in Kazakhstan would be of enormous assistance in relieving the Commission's own heavy workload while complementing the Commission's work. The Commission, with the assistance of several international organizations, was currently preparing a bill for the establishment of such a post. The Ombudsman would have to be independent and his office given financial independence. The Ombudsman should have the power to get involved in any human rights issue and should be supported by a team of human rights advocates.

13. The incidence of tuberculosis was unfortunately high in prisons; there had in fact been regular outbreaks since the collapse of the Soviet Union. The Government had achieved some success in controlling the disease, and vaccination campaigns should also help. Between 1998 and 2000 registered cases of tuberculosis among convicts in prisons had declined by 22 per cent and deaths had declined by 86 per cent.

14. With regard to the allegations of self-mutilation among prisoners, he said that official statistics had reported two cases in 2000, one in a young offenders' institution in Almaty oblast and the other in Seredenko prison in Qostanay oblast. In the latter case, 44 prisoners had injured themselves in a protest against searches of their cells. The wounds were superficial and not

life-threatening. A judicial investigation of the incident had resulted in the dismissal of the deputy head of the Qostanay Ministry of Internal Affairs and the prison governor for conducting searches in a manner that breached prison regulations. Six other officials had been disciplined. The prison governor had also faced charges under article 308 of the Criminal Code but had been acquitted. In the young offenders' institution in Almaty oblast, 57 inmates had inflicted superficial injuries on various parts of their bodies because of the introduction of what they viewed as unjustified special measures. An investigation had led to the dismissal of the head of the institution, his deputies and the head of the unit in which the incident had occurred. One of the deputies had been charged with exceeding his authority under article 308 of the Criminal Code. The trial was currently suspended because the accused had fallen ill.

15. One reason for the sharp increase in the number of women serving custodial sentences in recent years was the economic crisis and widespread unemployment that had followed the collapse of the Soviet Union. Kazakh women had proved extremely resourceful in finding ways of boosting household income. Unfortunately, the activities in which they engaged were not always entirely lawful. As a result, the proportion of women in the country's jails had increased. The three institutions for young offenders and two correctional institutions for women were not run by forces of the Ministry of Internal Affairs but by unarmed prison officers. Sixty-five per cent of the staff of the correctional institutions were women.

16. The material published by the United States State Department and by various non-governmental organizations (NGOs) about Kazakhstan was doubtless well intentioned and deserving of respect. However, much of the information had been gleaned from friends and relations of the alleged victims and sometimes consisted of half-truths. The hard facts could only be unearthed by law enforcement officers and members of the legal profession. One of the cases referred to by the State Department was that of the remand prisoner I. Y. Propopenko, who had died on 1 March 2000 of a cranial injury in Aqtobe regional hospital. The inmates who shared his cell had informed investigators that Mr. Propopenko had slipped on his way to the lavatory, striking the back of his head on the floor. The prison medical officer had arranged for his admission to hospital. According to the forensic report, he had died of a brain injury sustained from the fall. The decision in the light of the investigation not to institute criminal proceedings had been endorsed by the Procurator's Office.

17. In another case cited by the State Department, 10 people, including a Mr. Seidakhmetov, had been arrested on 1 May 1999 for hooliganism and theft in Zhambyl oblast. Mr. Seidakhmetov, as the instigator of the incident, had been sentenced on 26 April 2000 to six years' imprisonment and was currently serving his sentence. There was thus no truth in the allegation that he had died in prison.

18. The allegation that a policewoman by the name of Madieva had been raped during an investigation by fellow officers at the Sarysusk District Internal Affairs Office was also unfounded. She had become pregnant four months prior to the questioning. Moreover, Ms. Madieva was suffering from a mental disorder and had been attending a clinic for treatment.

19. In another case, Ms. Lyazzat Madieva had died on 10 May 2000 from renal failure at the age of 23. She had been undergoing treatment in the district hospital for two years prior to that date. Her fellow police officers had been in no way connected with her death and no investigation had been conducted.

20. He did not deny that detained persons were occasionally subjected to various forms of ill-treatment, but the relevant legal provisions had been made more severe and police who used force would be disciplined and/or prosecuted. It should be noted, however, that although the Kazakh Human Rights Commission received from 700 to 800 complaints each year, not one of the complaints made in 2000 had concerned torture or police misconduct.

21. Mr. ROGOV (Kazakhstan) said that the proposed revision of the Criminal Code did not imply that the existing legislation permitted the use of torture in criminal proceedings. The Government had recently set up an inter-ministerial commission on humanitarian law, which would be considering proposals from a number of international organizations regarding possible improvements in the Criminal Code, including the incorporation of the provisions of the Geneva Conventions of 1949 and creation of a specific offence of torture. The Government would no doubt support the recommendations of the inter-ministerial committee and set in motion the process of revising the Criminal Code.

22. He confirmed that torture was prohibited even in exceptional circumstances such as a state of war or any other public emergency.

23. With regard to the inadmissibility of evidence obtained by unlawful means, he said it was true that article 116 of the Criminal Code did not use the word torture. Although the reference to the use of force, threats, unlawful activities and deception was held to cover torture, he assured the Committee that the word itself would be inserted when the legislation was amended. He conceded that, in practice, the courts were sometimes not sufficiently meticulous when it came to examining the admissibility of evidence. To some extent, that shortcoming was due to the continuing inadequacy of legal training. Nevertheless, a defendant's admission of guilt could be accepted only where it was borne out by the facts of the case. With regard to the cases mentioned by the Committee in which that rule had allegedly been breached, it was difficult to respond without having established whether the defendant's guilt had been proved by other circumstances.

24. With regard to the role of lawyers, he noted that the Code of Criminal Procedure required counsel to participate in legal proceedings from the time a person was officially placed under arrest. A witness who was not a suspect could also have a lawyer present during the taking of evidence. The Committee had criticized the legislation on the grounds that lawyers did not participate actively as a matter of course from the very start of legal proceedings. However, where a suspect so requested, counsel could also be present during the 72-hour period when a person could be held in custody without being officially placed under arrest. When the Code of Criminal Procedure was amended, provision would probably be made for the presence of counsel from the outset.

25. Article 70 of the Code of Criminal Procedure listed the persons who were entitled to appear in court in defence of the accused. For the first time, Kazakh law allowed foreign

nationals to act as defence lawyers on condition that a bilateral agreement on that subject had been concluded by Kazakhstan. No such agreements existed, however, to date. The Government and the Ministry of Justice, together with members of lawyers' associations and representatives of human rights organizations were discussing ways of widening the powers of lawyers and enabling them to play a more active role in criminal proceedings.

26. Turning to the question of compensation for harm or injury caused by illegal actions, including the use of force or torture, by law enforcement agencies, he explained that under article 43 of the Code of Criminal Procedure, compensation could be awarded when persons who were acquitted had been deprived of their benefits, pensions or salaries or when their property had been confiscated during proceedings. Compensation was likewise given for fines levied as a result of unsound verdicts.

27. Article 44 of the Code of Criminal Procedure referred to compensation for moral harm or injury. The body responsible for rehabilitating the injured party was obliged to make an official apology and provide compensation through the civil legal system. A compulsory announcement of rehabilitation had to be issued in the mass media. The national budget included appropriations for a programme to compensate legal and natural persons for harm or injury done by the State or its agents. In the previous year, over $1 million had been disbursed under that programme, the bulk going to individual citizens. However, not all those people had suffered injury by State authorities in the context of criminal proceedings. More detailed information on the subject would be provided in the next report. In some cases, when harm had been inflicted by State bodies, the latter would pay compensation from their own budgets. The Ministry of Justice was responsible for managing that programme. No compensation had been paid in the current year.

28 The status of the Procurator's Office in Kazakhstan was governed by article 83 of the Constitution and by the Office of the Procurator Act. The Office was responsible for monitoring compliance with national legislation and supervising investigations and the collection of evidence. It took such action as was necessary to detect and deal with violations of the law or resolve conflicts between existing legislation and new legal and administrative provisions. The Office was also responsible for conducting criminal prosecutions.

29. The Procurator-General was appointed by the President to a five-year term of office, subject to Senate approval. The Procurator-General could not be arrested while in office, and could not be subjected to certain administrative proceedings or charged in a criminal case, unless caught committing a serious offence. The Procurator-General was independent of the Government and indeed often objected to the latter's decisions, rules and regulations. Accordingly, he could apply to the courts for the repeal of a statute. The decision to strip the Procurator-General of his power to conduct preliminary investigations had been controversial. On the other hand, it was inaccurate to say that Kazakhstan had no fully independent bodies to investigate crimes of torture, since the Procurator-General did have the possibility, at the preliminary stage, of establishing investigation teams headed by a procurator reporting to him. That, however, could only be done when the regular investigative bodies had proved less than objective and impartial. The proposal to establish separate bodies to investigate crimes involving torture had not met with wholehearted support in Kazakhstan.

30. Measures had been introduced to strengthen the independence of the legal system. A new constitutional law had been passed on the appointment and nomination of judges. District court judges were appointed by the President on the recommendation of the Bar Association, which organized open competitive examinations to identify eligible candidates. Presidents of district courts were still selected from rosters of candidates for Supreme Court judgeships, but it was likely that a competitive system would be introduced before long. If the Supreme Court considered that judges were not doing their work properly, it could dismiss them. Technical and material support for the court system was in the hands of a new Committee on Court Administration, which was independent of the President and Parliament and accountable only to the Supreme Court.

31. Disciplinary proceedings against judges could be initiated only by the relevant peer disciplinary bodies. Grounds and procedures for dismissal were clearly set out in new legal provisions. The Supreme Court Disciplinary Board, chaired by an appointee of the President of the Republic, consisted of the Procurator-General, the President of the Supreme Court, the Minister of Justice, two members of the Senate and several judges.

32. The Supreme Court was entitled to give an opinion on the interpretation of legislative provisions after studying legal precedents. If the judges found that a particular law or instrument limited the rights and freedoms of a citizen, they stayed any legal proceedings under those provisions and applied to the Constitutional Council to have the law declared unconstitutional. Approximately 12 such applications were lodged every year.

33. According to article 10, paragraph 6, of the Code of Criminal Procedure, persons in detention had the right to medical assistance. Similarly, article 23 of the Law on Procedures and Conditions for Detention contained rules stipulating that the authorities in charge of detention facilities must protect the health of suspects and accused persons. When bodily harm was suspected, an examination had to be carried out immediately by a member of the medical establishment. His delegation considered that the Committee's suggestion that detainees should be allowed to consult a doctor of their choice was justified and, although persons in custody could do so in practice, a legal provision to that effect would not be superfluous.

34. The right of persons not to give evidence against themselves or their close relatives did not mean that they could not testify against a neighbour. Before persons were questioned, they were informed of their right to refuse to give information in certain circumstances; if they waived that immunity, they would be warned about the criminal liability they would incur if they supplied false information or refused to give evidence. Unfortunately, no data was available about the frequency with which citizens claimed such immunity.

35. He had no information about allegations concerning the dismissal of psychiatrists from government posts on the grounds that they had helped the accused. Some psychiatric experts had been dismissed for issuing subjective reports in criminal cases. Normally psychiatric examinations were carried out by the health authorities, but they could also be conducted by psychiatrists from the Ministry of Justice.

36. The enormous size of Kazakhstan and the country's poor infrastructure were the reasons for permitting the detention of a person for 72 hours without authorization from the Procurator,

but he would inform his Government of the Committee's suggestion that that period should be reduced to 24 hours. In exceptional cases, however, he felt that the 72-hour deadline should be maintained. The grounds on which someone could be held in custody without authorization from the Procurator were set forth in article 32, paragraph 4, of the Code of Criminal Procedure.

37. The term "isolator" referred to a temporary detention centre and not to solitary confinement. Detainees in such centres must be allowed eight hours of uninterrupted sleep and at least one hour of exercise every day. The only person who had the unrestricted right to talk to the detainee in private was the defence lawyer. Detainees who had not yet been sentenced could meet members of their family. Such meetings were supervised by prison guards, and if any member of a detainee's family or the detainee tried to pass on information relating to the case, the meeting could be stopped immediately. The Kazakh authorities considered that such action was absolutely justified and did not violate human rights, as the person in question was under investigation.

38. In response to questions about the prison system, he said he hoped that Parliament would soon ratify a bill to transfer responsibility for prisons from the Ministry of Internal Affairs, which was also responsible for the police and criminal investigations, to the Ministry of Justice. The latter would be in a better position to monitor and improve prison conditions and protect prisoners' human rights than the Ministry of Internal Affairs, which had a more paramilitary structure. The process would, however, be a gradual one, since many of the staff would be retained and the administrative details of the transfer still had to be worked out. The Ministry of Justice had established a working group to monitor the transfer and humanize the prison system. He stressed that the transfer represented a systemic change in the penal system. Conditions had in fact already improved, since torture and other inhuman treatments were no longer used. Other improvements included more windows and furniture, the modernization of sanitary facilities and the construction of two new prisons to international standards. In addition, 17 new prison and detention centres and the renovation of existing prisons were planned for 2000-2005.

39. Monitoring of the human rights situation of prisoners was primarily the responsibility of the prison administration. The authorities often allowed and even encouraged prisoners to organize groups to help them maintain law and order, but such groups seemed to be effective and could even be a positive experience for the inmates themselves. There was also an office for the defence of prisoners' rights within the Ministry of Internal Affairs which inspected prisons and monitored the human rights situation there. The office was authorized to provide documentation to international human rights organizations as well as human rights-related educational material to the prison authorities and staff. Procurators were also responsible for ensuring that conditions in the prisons were in accordance with the law and could act immediately, bringing charges if necessary. Any citizen, including prisoners, had the legal right to complain to the prison administration, as could NGOs. The Ministry of Internal Affairs in fact enjoyed a relatively good relationship with human rights organizations, through its human rights office, as well as with organizations active in the area of prison and legal reform. Although human rights organizations had at times complained of lack of access to prisons, he expected that the transfer of responsibility to the Ministry of Justice would improve that situation.

40. The current prison population was 88,421, of whom 3,940, or 3.5 per cent, were women and 1,126, or 1.8 per cent, minors; 18,790 individuals were in provisional detention. Those

figures might seem rather large in relation to Kazakhstan's total population, but efforts were under way to reduce the prison population, and it was hoped that by 2003 or perhaps even 2002 some offences would be decriminalized and therefore not subject to prison terms and that, alternatives to imprisonment, especially long-term imprisonment, would be in place. He noted that since January 2000 community service had been an option available to judges, although to date that option had rarely been exercised. The Supreme Court also intended to study whether only the most serious crimes should be sanctioned by imprisonment, as part of a trend towards a less draconian attitude to the suppression of crime.

41. As for the difference between pre-trial detention centres and temporary detention centres, he said that the former tended to be reserved for individuals accused of crimes against national security, who were of course fewer in number than ordinary felons, and while the conditions in some of those centres were poor, owing to insufficient funding, most of them were adequate. The temporary detention centres, which also included detention centres on military bases, housed convicted criminals, suspects under investigation and those who had just been arrested, they were usually located in holding areas in local offices of the Ministry of Internal Affairs.

42. In response to a question about the use of audio and video recording made during investigations and questioning, he said that prisoner interrogations were often videotaped, as were investigations at the crime scene. Psychological profiling had also been used recently, and of 60 complaints of coercion by the police since 1998, such techniques had been used to prove that coercion had occurred in only 10 cases.

43. He was trying to get information about the extradition of Uighurs to China and would transmit any information he received to the Committee in writing. He noted that Kazakhstan had entered into an agreement with China on legal assistance, including extradition, and said that since his Government had no reason to believe that those extradited would be subject to torture, such extraditions did not violate article 3 of the Convention.

44. In concluding, he noted that the Committee members seemed well informed about the current situation in Kazakhstan and the reforms under way since 1994 to bring the country's legal system into conformity with international standards. Efforts would continue to reform the criminal justice system, as it was essential that society and law enforcement officials in particular should develop respect for the law and legality. The latter had at first opposed reforms, which they believed to be catering to criminals. The Committee's recommendations played an important role in the Kazakh Government's efforts to improve the legal system and re-educate its citizens.

45. Ms. GAER thanked the delegation for the new information provided, including information about some, although not all, the cases the Committee had specifically mentioned. It was clear that many problems remained, and it was important that the mentality which seemed to prevail within the police and the legal system should be changed. Although attitudes at the upper levels of the administration seemed to have changed, she wondered whether there had been any real change at the operational level. It was also essential that independent civil society and non-governmental organizations should be allowed to verify information presented. Along with international organizations, they could play a key role in promoting the rule of law. The Government should promote greater openness and take measures to facilitate complaints about

human rights abuses. She also wondered whether the dual role played by the procurators was not inherently contradictory and stressed that there should be some practical definition of torture in the Criminal Code, specifically as it applied to the conduct of State officials.

46. Mr. RASMUSSEN informed the delegation that the case to which he had referred involved a psychiatrist, Mr. Taras Popov, who had worked at a labour camp for adolescent offenders, Lager 155 in the centre of Almaty and had been arrested and dismissed the day after the film in question had been shown.

47. Mr. MAVROMMATIS confirmed that the Human Rights Committee had called on the State party to report to it under the terms of the International Covenant on Civil and Political Rights.

The meeting rose at 6.05 p.m.